

Letter of Findings Number: 04-20140330
Use Tax
For Tax Years 2011-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Use Tax—Imposition.

Authority: Meyer Waste Systems, Inc. v. Indiana Department of State Revenue, 741 N.E.2d 1 (Ind. Tax Ct. 2000); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-27; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

STATEMENT OF FACTS

Taxpayer is an Indiana business that provides garbage collection services. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2011 and 2012. The audit resulted in the assessment of use tax and interest for those tax years. Taxpayer protested the imposition of use tax on motor fuel used for its garbage trucks. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests a portion of the use tax imposed for tax years 2011 and 2012. The Department reviewed Taxpayer's purchases and imposed use tax on items of tangible personal property ("TPP") upon which sales tax had not been paid at the time of purchase. Taxpayer argues that it is a public transportation provider which would exempt it from use tax on certain purchases. Specifically, Taxpayer argues that use tax should not be applied to purchases of motor fuel used in fueling its garbage trucks. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when sales tax is not paid when TPP is purchased, use tax will be imposed.

However, IC § 6-2.5-5-27(a) exempts certain TPP transactions:

Except as provided in subsection (b), transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The Indiana Tax Court has provided guidance when garbage haulers are claiming the public transportation exemption. In *Meyer Waste Systems, Inc. v. Indiana Dept. of State Revenue*, 741 N.E.2d 1, 5 (Ind. Tax 2000), the court states that:

[I]n order to qualify for the [public transportation] exemption the hauler must not be the owner of the garbage.

The Meyer Waste Systems opinion further states that:

After a very thorough review of the different approaches taken by other jurisdictions regarding this ownership issue, this Court held that absent an agreement otherwise, the ownership of garbage passes from the generator to the hauler when the hauler removes the garbage from the generator. *Id.*

Thus, a garbage hauler's purchase of TPP is exempt under IC § 6-2.5-5-27 if it can show that it directly uses or consumes that TPP in providing public transportation for persons or property does not own the garbage it transports. According to Meyer Waste Systems, a garbage hauler is the owner of the garbage it transports unless a contradictory agreement exists between the hauler and generator.

Taxpayer protests the imposition of use tax on purchases of motor fuel for its garbage trucks. It argues that the trucks are used in providing public transportation because it transports the garbage of others. However, as Meyer Waste Systems states, a garbage hauler owns the garbage unless there is a differing agreement between the hauler and generator. Taxpayer has not provided the Department with any documentation suggesting such an agreement. Additionally, the decision in Meyer Waste Systems provides that ownership of the garbage transfers to the garbage hauler when the hauler picks up the garbage from the generator. No other communication or intention is required to transfer ownership. Therefore, Taxpayer owns the garbage it hauls and is not entitled to the use tax exemption for its motor fuel purchases. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied regarding the imposition of use tax.

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